

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

DAVID EUGENE EAKLE,

Plaintiff,

v.

CIVIL ACTION NO. 2:09-CV-105

**GROVER ROSENCRANCE,
JIM RUBENSTEIN AND ALL
UNIT MANAGERS AND
CORRECTIONAL OFFICERS
THAT WORK IN LOCK-UP
UNIT FOR SEGREGATION,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Opinion/Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on December 13, 2009 [Doc. 27]. In that filing, the magistrate judge recommended that this Court dismiss the plaintiff's Complaint [Doc. 2] for failure to state a claim.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or

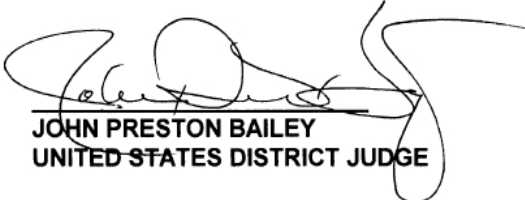
recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on December 7, 2009. No objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Opinion/Report and Recommendation [Doc. 27]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court is of the opinion that the plaintiff's Complaint **[Doc. 2]** should be, and hereby is, **DISMISSED** pursuant to 28 U.S.C. § 1915(e) for failure to state a claim upon which relief may be granted. Therefore, the matter is hereby **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: March 17, 2010.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE